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ONE HUNDRED EIGHTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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February 19, 2004

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Honorable Scott J. Bloch  
Special Counsel  
Office of Special Counsel  
1730 M Street, NW, Suite 300  
Washington, D.C. 20036-4505

Dear Mr. Bloch:

We are writing to you about an extremely disturbing report in the Washington Post that you have ordered the removal of information having to do with discrimination on the basis of sexual orientation from the Office's web site. "Gay Rights Information Taken Off Site," WASHINGTON POST, A17 (February 18, 2004). According to this report, this information was removed from "a discrimination complaint form, training slides, a brochure titled 'Your Rights as a Federal Employee' and other documents."

According to this report you have stated that you ordered this information removed because of an alleged uncertainty over whether civil service law protects employees against unfair treatment because they are lesbian, gay, bisexual or heterosexual. You are quoted as having said that "it is wrong for me, as a federal government official, to extend my jurisdiction beyond what Congress gives me in the actual interpretation of the statutes."

Your position is directly at odds with established practice, the plain meaning of the law, and how that law has been interpreted for decades. Rather than removing information from this web site that might help federal workers protect their legal rights, your action will ensure that workers who are the victims of illegal misconduct by their agencies will receive no assistance from your office which exists for the express purpose of safeguarding those rights.

The specific law in question prohibits "discrimination for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others..." Civil Service Reform Act of 1978 (5 U.S.C. 2302(b)(10)). The Office of Personnel Management "has interpreted this statute to prohibit discrimination based upon sexual orientation. Sexual orientation means

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homosexuality, bisexuality, or heterosexuality.” Office of Personnel Management, ADDRESSING SEXUAL ORIENTATION DISCRIMINATION IN FEDERAL CIVILIAN EMPLOYMENT: A GUIDE TO EMPLOYEE’S RIGHTS 4 (OWR-25 June 1999). Furthermore, Executive Order 11478 states clearly that “[i]t is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, or sexual orientation, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.”

Apparently, until your recent appointment, the Office of the Special Counsel took the same position. This radical new interpretation appears not to have been occasioned by any change in law or policy. From all appearances, you seem to have taken it upon yourself to withdraw legal protections for federal employees without any legal authority. Rather than seeking to clarify the law governing discrimination against federal workers, you appear determined to ignore long established understanding of the law.

We also ask that you respond to the following questions:

- Has the Office of Special Counsel removed from its web-site or altered any other materials or information related to employee rights within its jurisdiction? If so, please provide us with a detailed description of any such material and when it was removed or altered.
- Did anyone in, or affiliated with, the Executive Office of the President, other federal agency, or the Congress, suggest or direct that you take this action? If so, who was this person and what was the nature of the contact?
- What is the nature and status of the review you described to the Washington Post? Who is conducting the review and what is its status? When do you anticipate this review will be completed?
- What specific concerns led you to question the legal basis of this guidance?
- How will the Office of the Special Counsel handle complaints related to sexual orientation in light of your decision? What instructions have you given to personnel within your office concerning this matter?
- How do you believe this issue is affected by the Supreme Court’s recent decision in *Lawrence v. Texas*, in which the Court stated, “[t]he Texas statute furthers no legitimate

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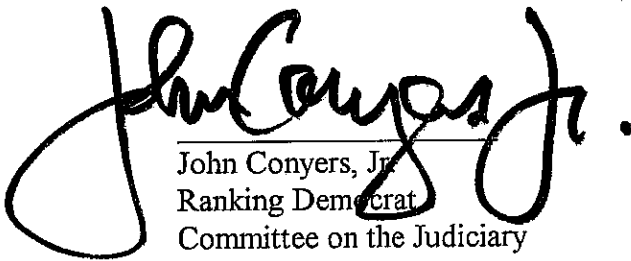
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state interests which can justify its intrusion into the personal and private life of the individual?"

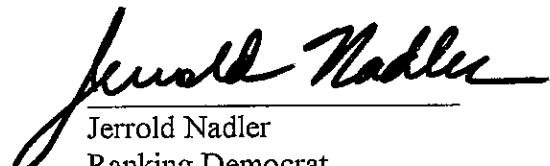
We ask that you immediately rescind your unwarranted action and report to the House Judiciary Committee on what actions you are taking to rectify the false impression you may have given federal employees about their legal rights. We further ask that you report immediately to the Committee what actions you will take to ensure that the Office of the Special Counsel acts vigorously to enforce the rights guaranteed to federal employees under longstanding law and policy.

If you have any question about this matter, please contact Perry Apelbaum or Ted Kalo of my Judiciary Committee staff by mail (2142 Rayburn House Office Building, Washington, DC 20515), by telephone (202-225-6504); or, by fax (202-225-4423).

Sincerely,



John Conyers, Jr.  
Ranking Democrat  
Committee on the Judiciary



Jerrold Nadler  
Ranking Democrat  
Subcommittee on the Constitution

cc: Honorable F. James Sensenbrenner  
Chairman, Judiciary Committee

Honorable Steve Chabot  
Chairman, Constitution Subcommittee